

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4731 of 1985

Date of decision: 3-12-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAGDISHCHANDRA B BHATIA

Versus

ARASURI AMBAJI MATA DEVASTHAN TRUST

Appearance:

MR PM RAVAL for Petitioners

MR GIRISH D BHATT for Respondent No. 1

Mr. H. L. Jani for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/12/97

ORAL JUDGEMENT

In view of the subsequent developments which have taken place after filing of this special civil application, the facts and grounds raised therein are not required to be given in detail.

2. Learned counsel for respondent No.1 states that the order annexure-P dated 26th June, 1985 has already been withdrawn. It has further been stated in the affidavit-in-reply that the shops which are to be allotted to the persons mentioned in the annexure to the final T.P. Scheme of Ambaji, numbering about 64 is expected to be completed by 30th September, 1998. The petitioners are persons who are occupying land at Ambaji, on which cabins are there and they are doing their business. In the T.P. Scheme these cabins were proposed to be removed from the site in question and the holders thereof were decided to be given shops elsewhere to be constructed by respondent No.1. Dispute has arisen when respondent No.1 has decided to take rent at the rate of Rs.800/- per month of the shops to be allotted to the petitioners, which has given rise to the filing of this special civil application before this Court.

2. This Court on 12-9-1985 passed the following order:

"Mr. Raval seeks leave to amend the petition concerning respondent No.3 - the State Government - by stating that the notice is to be sent to the Secretary, Legal Department, Sachivalaya, Gandhinagar. Leave granted.

Mr. G. D. Bhatt, for respondent No.3, now states that the impugned letter at annexure-P at page 81 of this compilation, dated 26-6-1985, addressed by the respondent No.1 to Jagdishchandra Bhatia; and similar notices given to other petitioners; are all withdrawn by a written communication dated 2-8-85; and Mr. Bhatt says that all the petitioners have signed the office copy in token of having received the same. S.O. to 19-9-85."

Thereafter, the order passed on 24-10-1985 reads as follows:

"Ad interim relief only to this effect that respondent Nos.1 and 2 are restrained from taking any action against the petitioner for the purpose

of removal of the cabins, which are given to the petitioners by the respondents, but this injunction is not to operate qua the additions or alleged encroachments made beyond the limits of the cabins.

Interim relief also in terms of para
24(E)."

Para 24(E) of the petition reads as under:

"This Hon'ble Court will be pleased to restrain the respondents from disposing of the shops constructed by the respondent No.1 without giving first preference to the petitioners to other persons till and pending the hearing and final disposal of this petition."

So, in view of the aforesaid interim relief granted by this court the petitioners are continuing in the cabins, and further the respondent No.1 is restrained from disposing of the shops to be constructed by it without giving first preference to the petitioners. From the facts which have come on record as aforesaid, the shops have not so far been constructed. Construction of 64 shops are in progress and it is likely to be completed by 30th September, 1998. The State has to fix the rent of the shops. Whatsoever be the rent of the shops, the same has to be fixed after construction of the shops and provisional allotment thereof has been made to the petitioners. This matter pertains to a temple (Ambaji) and I fail to see any justification in such litigation before this Court. These are matters to be decided by sitting across the table and only where the parties fail to resolve their differences, and litigation becomes unavoidable, then only taking of litigation in the appropriate legal forum may have some justification.

3. However, interest of justice will be served in case this special civil application is disposed of in terms that after completion of construction of 64 shops provisional allotment of the shops be made to the persons including the petitioners in accordance with law. While making provisional allotment, provisional rent of the shops to be charged shall also be notified to the persons concerned, and such persons will have the right to raise objection to the proposed rent of the shops, and after considering such objections and affording an opportunity of hearing to the affected persons, respondent No.1 shall decide the final rent to be charged. In case still the allottees are not satisfied with the rent which has been fixed by respondent No.1, then they may approach the State Government in the concerned Department, and the

Secretary of the Department will constitute a Committee under his Chairmanship with other members, such as Secretary, Public Works Department and Secretary, Legal Department, to decide what should be the rent of the shop to be charged from the allottees. The Committee shall pass reasoned order and copy of the same shall be given to all the concerned parties. Still thereafter if some grievance of the petitioner survives, then they will be at liberty to revive this special civil application by filing a simple note. Till the matter is decided finally as aforesaid, the interim relief which has been granted by this Court shall continue only to the extent of dispossession of the petitioners from the cabins in question and on the same terms as it is granted. Special civil application and the rule stand disposed of accordingly. No order as to costs.

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